IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6676 OF 2004

Anamik Co-operative Housing
Society Limited ... Petitioners

versus

Shri Narayan Janardhan
Ambedkar and others ... Respondents

...

Mr. P.P. Patankar, for the Petitioners.

Mr. Shahapurkar, for Respondent No. 1.

...

CORAM : A.M.KHANWILKAR,J.

17th August 2004

P.C.:

. Heard Counsel appearing for the parties. Rule. Rule made returnable forthwith by consent. Mr. Shahapurkar waives notice for Respondent No. 1. Respondents Nos. 2 and 3 are formal parties. Notices to Respondents Nos. 2 and 3 are dispensed with. As short question is involved, petition taken up for final disposal forthwith by

consent.

2. This petition takes exception to the judgment and order passed by the President, Maharashtra State Co-operative Appellate Court, Bombay, dated June 21, 2004 in A.O. No. 46/2004. By the said appeal, the Petitioner had assailed the correctness of the decision of the Co-operative Court No. 4, Bombay, dated February 16, 2004, in Dispute No. 239 of 1996, wherein the Co-operative Court held that the Court has jurisdiction to try and entertain the dispute, except in respect of the amount of Rs.1,20,000/- allegedly incurred by the Respondent No. 1 - Disputant towards legal expenses. The Co-operative Court directed Respondent No. 1 to amend the dispute and delete necessary pleadings in respect of the recovery of alleged amount towards legal expenses. This decision was questioned before the Co-operative Appellate Court by the Petitioner Society. According to the Petitioner Society, the dispute as filed could not have proceeded further, having regard to the fact that the matter with regard to the demand made by the Petitioner Society qua the

members, in particular Respondent No. 1 herein, has been finally resolved before the Apex Court, as can be seen from the decision of the Apex Court dated September 18, 1995 in Civil Appeal arising out of S.L.P. (C) No. 12463 of 1995. According to the Petitioner Society, the issue of expulsion was answered against Respondent No. 1 right upto this Court. However, in the appeal preferred before the Apex Court, the expulsion order was interfered with on condition that Respondent No. 1 should pay a sum of Rs.1,70,840/- towards the dues of the Petitioner Society till August 31, 1995 and further sum of Rs. 75,000/- towards the costs incurred by the Petitioner Society for the litigation upto the Apex Court. In substance, the case of the Petitioner is that the present dispute filed by the Respondent No. 1 covers the selfsame demand of the Petitioner Society (for the same period), which was subject matter of conditional order passed by the Apex Court on September 18, 1995. The trial Court has, however, accepted the argument of Respondent No. 1 that the order passed by the Apex Court was "without prejudice to the rights and contentions of Respondent No.1"

and for which reason, it was open to the Respondent No. 1 to institute fresh dispute; however, has excluded the claim of Rs.1,20,000/- putforth in the said dispute on behalf of Respondent No. 1 towards litigation expenses as that issue has been finally concluded by the order passed by the Apex Court. The Petitioner Society being dissatisfied with that order had filed appeal contending that the dispute cannot proceed at all, as the claim in the dispute is overlapping with the claim, which has been finally resolved by the Apex Court. On the other hand, the case of Respondent No. 1 is that the Apex Court, no doubt, directed Respondent No. 1 to pay the amounts as demanded by the Petitioner Society, but that payment has been made without prejudice to the rights and contentions of the parties; and if it is so, it is open for the Respondent No. 1 to institute fresh dispute for recovery of the excess amount already paid to the Society than the legitimate dues payable to the Society. To buttress this submission, reliance is placed on the Dictionary meaning of expression "without prejudice". The extract is produced from the Book, Supreme Court on Words & Phrases,

page 1142, which reads thus :

> " ... In short, therefore, the implication of the term 'without prejudice' means (1) that the cause or the matter has not been decided on merits, (2) that fresh proceedings according to law were not barred. ... "

Reliance is also placed on the decision of the Apex Court in the case of Chairman and MD, NTPC Ltd. v. Reshmi Constructions, Builders and Contractors, reported in (2004) 2 S.C.C. 663 to buttress this proposition. Besides, it is contended on behalf of Respondent No. 1 that after the disposal of the appeal before the Apex Court, the Society having withdrawn the recovery dispute filed against Respondent No. 1, Respondent No. 1 had no option but to agitate about excess payment, only by instituting a fresh dispute, as has been filed in the present case.

3. Having considered the rival submissions, it is necessary to straightaway advert to the two orders passed by the Apex Court, which are

relevant for deciding the point in issue. The first order is dated 7th August 1995, which reads thus :

> " Without prejudice to the rights and contentions, the respondent will handover to the petitioner the total demand/claim of the society on account of non-payment together with interest till August 31, 1995. A copy of the demand be handed over to the petitioner within two weeks from today.
>
> List the matter after five weeks."

. The Civil Appeal was, however, finally disposed of by order dated September 18, 1995 by passing the following order :

> " Leave granted. Heard learned counsel for the parties.
>
> Considering the special facts and circumstances of the case, we dispose of this appeal by directing that the

impugned order passed by the Division Bench of the Bombay High Court will remain stayed for a period of eight weeks from today on condition that within a period of four weeks from today the appellant will pay to the respondent Anamik Co-operative Housing Society Ltd. a sum of Rs.1,70,840/- towards the dues of the Society from the Appellant which he had defaulted to pay and within four weeks thereafter, the appellant would pay a further sum of Rs. 75,000/- towards the cost incurred by the said society in the litigations upto this Court because of the default committed by the appellant. If the said sums are not paid within the aforesaid time frame, the impugned order of the Bombay High Court will become operative. In the event of payment as directed hereinbefore, the order of the Bombay High Court will stand set aside and the appellant will be treated as a member of the said society. It is further directed that the appellant on payment of the aforesaid sums, will be

entitled to allotment of Flat No. 28 in lieu of Flat No. 35 which was initially allotted to him. The appeal is accordingly disposed of."

4. It is not in dispute that the claim in the present dispute is overlapping with the amounts referred to in the demand/claim of the Petitioner Society settled before the Apex Court. The justification given on behalf of Respondent No. 1 for instituting the fresh dispute is that the order as passed by the Apex Court was "without prejudice to the rights and contentions of the parties". It is not possible to accept this submission. The appeal was finally disposed of by order dated September 18, 1995. There is no reference in the said order that the arrangement stated therein was "without prejudice" to the rights and contentions of the parties and in particular granting liberty to the Respondent No. 1 herein. Much emphasis was, however, placed by the Counsel for Respondent No. 1 on the interim order passed by the Apex Court dated 7th August 1995, which mentions, "Without prejudice to the rights and contentions, the

respondent will handover to the petitioner the total demand/claim of the society on account of non-payment together with interest till August 31, 1995." On a fair reading of this order, it is seen that the Apex Court directed the respondent before it - Petitioner herein - to handover to the petitioner - Respondent No. 1 herein - the total demand/claim of the society on account of non-payment together with interest till August 31, 1995. In other words, the Petitioner was to hand over the total demand/claim of the Society till August 31, 1995 without prejudice. Accordingly, that statement was made over to the petitioner - Respondent No. 1 herein. Obviously, thereafter, the parties invited the order as has been passed by the Apex Court on September 18, 1995. As mentioned earlier, the final order that has been passed by the Apex Court makes no reference to the fact that the arrangement stated therein is "without prejudice" to the rights and contentions of the parties and in particular granting liberty to of the Respondent No. 1 herein. In that sense, the submission advanced on behalf of Respondent No. 1 that he was not precluded from instituting a

fresh dispute according to law, is unavailable in the fact situation of the present case. Viewed in this perspective, it will have to be held that it was not open to the Respondent No. 1 to institute fresh proceedings relating to the claim pertaining to the same period, which has already been resolved in the final order passed by the Apex Court on September 18, 1995, for there is no liberty given to the Respondent No. 1 to take resort to fresh proceedings for recovery of excess amount paid nor the arrangement stated in that order is "without prejudice" to the rights and contentions of the parties. A priori, the reported decision of the Apex Court in the case of NTPC Ltd. (supra) will be of no avail. Accordingly, in my opinion, the dispute as filed will not be maintainable, unless liberty was granted by the Apex Court to the Respondent No.1 in that behalf, for such a dispute will be abuse of process of court. On this reasoning, the impugned orders will have to be set aside and, instead, the application, as filed by the Petitioner Society before the trial Court to hold that the fresh dispute instituted by the Respondent No. 1 was not maintainable in view of

the order of the Apex Court will have to be granted in its entirety, in which case the dispute filed by the Respondent No.1 will have to be dismissed as not maintainable. Ordered accordingly.

. Writ petition succeeds on the above terms. No order as to costs.

. Parties to act on the authenticated copy of this Order.